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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,621	11/30/2001	Masato Takahashi	3404/OK075	4928

7590
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08/12/2003

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/12/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,621

Applicant(s)

TAKAHASHI ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1,3-10 and 12 is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 03 June 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 3, 2003 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(f) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the notch as depicted. Specifically, there is no disclosure to show the depth, rounded innermost edge or position along the sidewall as depicted.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the notch of the sealing element and the rubber material of the gasket must be shown the cross-sectional views or the features canceled from the claims. Currently, the gasket is depicted as metal (MPEP 608.02). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1,3-10, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 1 recites the limitation "the interior" and "the exterior" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested -- an -- be substituted for "the".

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Claim 9 recites the limitation "the compartmentalized inner wall of the fit-holding portion" in the next to last line. There is insufficient antecedent basis for this limitation in the claim. It is suggested the phrase be deleted.

Claim 12 recites the limitation "the inner side wall of the sealing element" in line 3. There is insufficient antecedent basis for this limitation in the claim.

It is unclear how one determines the inner surface of the sealing element.

As a result of using "fitting means", claims 1,3,4,9, and 11 fail to meet the 3-prong analysis of a "means plus function" claim set forth in the "Supplemental Examination Guidelines" effective June 21, 2000 and published in the Official Gazette on July 25, 2000. If applicant desires to invoke 35 USC 112, 6th paragraph, applicant must either modify the claims to include the phrase "means for" or show that even though the phrase "means for" is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 USC 112, 6th paragraph. It is noted applicant has not made the change to the claim language and there is too much structure to invoke 35 USC 112, 6th paragraph.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. (US 5,112,065) in view of Poltorak (US 3,334,774).

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Seal 1 has a flexible protruding portion 19, a projecting portion 13 and a vertical wall for positioning on the inner side wall (see fig. 2). Thus, Meyer teaches the claimed sealing element except for the rounded projection at the end of the end of the protruding part.

Poltorak teaches it is known to provide a rounded projection 26 at the end of a sealing element protruding part.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to change the shape of the projection at the end of the end of the protruding part of Meyer to a rounded projection as evidenced by Poltorak, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Poltorak and Semon (US 4,758,004).

Meyer as modified teaches the claimed sealing element except for the plurality of fitting ribs and the closest fitting rib to the entrance side of the fit-holding portion being higher than the other fitting ribs.

Poltorak teaches it is known to provide a plurality of fitting ribs on the fitting means.

Semon also teaches a plurality of fitting ribs, one rib being higher than others.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of fitting ribs on the modified fitting means of Meyer and make one fitting rib higher than the others. Doing so provides a better sealing arrangement for a container and lid.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 above, and further in view of Ryan (US 5,009,036).

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Meyer as modified teaches the claimed sealing element except for the protruding part curved inwardly.

Ryan teaches it is known to inwardly curve a protruding part of a sealing element.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inward curve to the protruding part. Doing so provides a better seal between the container and the door since there is less resistance to bending of the protruding part upon application of the door to the container.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Ryan (US 5,009,036).

Meyer as modified teaches the claimed sealing element except for the protruding part curved inwardly.

Ryan teaches it is known to inwardly curve a protruding part of a sealing element.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inward curve to the protruding part Meyer. Doing so provides a better seal between the container and the door since there is less resistance to bending of the protruding part upon application of the door to the container.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 12 above, and further in view of Ryan.

Meyer as modified teaches the claimed sealing element except for the protruding part curved inwardly.

Ryan teaches it is known to inwardly curve a protruding part of a sealing element.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inward curve to the protruding part. Doing so provides a better

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seal between the container and the door since there is less resistance to bending of the protruding part upon application of the door to the container.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 12 above, and further in view of Poltorak and Semon

Meyer as modified teaches the claimed sealing element except for the plurality of fitting ribs and the closest fitting rib to the entrance side of the fit-holding portion being higher than the other fitting ribs.

Poltorak teaches it is known to provide a plurality of fitting ribs on the fitting means.

Semon also teaches a plurality of fitting ribs, one rib being higher than others.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of fitting ribs on the fitting means of Meyer and make one fitting rib higher than the others. Doing so provides a better sealing arrangement for a container and lid.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Ryan.

Meyer as modified teaches the claimed sealing element except for the protruding part curved inwardly.

Ryan teaches it is known to inwardly curve a protruding part of a sealing element.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inward curve to the protruding part. Doing so provides a better seal between the container and the door since there is less resistance to bending of the protruding part upon application of the door to the container.

12. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krampotich et al. (US 6,354,601) in view of Meyer.

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Krampotich teaches the claimed container except for the structure of the sealing element.

Meyer teaches a container having a sealing element as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the sealing element of Meyer for the sealing element of Krampotich. Doing so provides a sealing element having a better sealing effect.

Regarding claim 10, Meyer is silent regarding the specifics of the elastomeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the gasket of a fluororubber composition, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Response to Arguments

13. Applicant's arguments with respect to claims 9 and 10 have been considered but are moot in view of the new ground(s) of rejection.

14. Applicant's arguments filed June 3, 2003 have been fully considered but they are not persuasive.

Amended claim 1 having the limitations of canceled claim 2 therein is not patentable over the prior art as set forth above. The patent to Poltorak is applied for teaching a rounded portion on a protruding part of a sealing element. That is supportive of the obviousness to change the shape of the tip end of a protruding portion. It is not intended to be indicative of the reasons applicant has provided a rounded portion on the protruding part of the instant invention.

Regarding the rejection under 35 USC 112, sixth paragraph, applicant has not made the change to the claim language and there is too much structure set forth in the claims to invoke the doctrine of equivalents as set forth in the statute.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ando teaches a sealing element having a rounded end at a protruding portion thereof, Boyd et al. teaches a sealing element having a recess, and Trehan teaches a sealing element having protrusions on an inner side wall.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

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asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

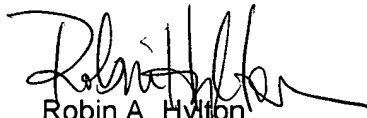
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
August 8, 2003


Robin A. Hylton
Primary Examiner
GAU 3727